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January 17, 1994

**The Honorable Donna R. Searcy,**  
**Secretary,**  
**Federal Communications Commission**  
1919 M-Street NW  
Washington DC 20554

JAN 21 1994

Re. Limitations, Commercial Matter, Broadcast Stations

Ms. Searcy:

As a consultant working with two of the handful of major corporations in the infomercial business and frequently with independent entrepreneurs, each using his own, single infomercial to promote a product or service; and as a consultant on all aspects of direct marketing, I have, admittedly, a vested interest, but I also have a perspective that may be different from most of the people who are writing to you about this matter. Unlike many you are hearing from who work only with infomercials, to me, the infomercial represents only one of dozens of media alternatives I employ for my clients. I am not, therefore, communicating with you from the position of having my personal economic survival threatened.

I do feel strongly that restrictions on broadcast stations' airing of commercial matter, specifically program length advertisements ie. infomercials, represents an unnecessary governmental interference with the free enterprise system and with consumers' rights - and their responsibility in a free society to exercise those rights.

Quickly, my case:

1 - There is abundant survey evidence, conducted by the infomercial industry and by broadcast stations evidencing the public's receptivity to infomercials. The majority welcome them, watch them, feel informed by them, and, of those who have purchased from them, the majority are satisfied and indicate they will purchase from another infomercial.

2 - If, contrary to this, the viewers in a given community or nationally object to a station's or stations' airing of or "excessive" airing of infomercials, those viewers need only make themselves heard in a reasonable quantity and you can bet the biggest rumor in the beltway that programming policies will change in response. Not only do viewers possess this power, they should be encouraged to use it rather than having the government guess at their preferences and step in as their surrogate. Such unnecessary government interference only serves to weaken the very fabric of our democracy, foster intellectual laziness, apathy, and dependence. We are all better served by an activist population. Where the public can exert control by 'voting', it should be encouraged to do so.

3 - The infomercial is THE most "democratic", consumer-controlled type of advertising ever to be broadcast. The viewers vote instantly, each time it airs. If they vote "no", the typical infomercial will air for its first AND last time all within a week. If the viewing public in a given community votes 'no' to most infomercials for just a couple weeks, those stations'

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available time slots will no longer be in demand. The entire infomercial industry is small; word of a non-responsive market would spread overnight.

If the public votes 'no' nationally, in two weeks the entire infomercial industry will cease to exist. The viewers do have very direct, total control over whether or not infomercials air and to what extent and frequency they air.

4 - Restrictions would impose an unfair competitive disadvantage on broadcast vs. cable, but maybe even more importantly, restrictions would be a severe hardship to non-network affiliated, independent broadcast stations. The revenue that these stations are receiving from airing infomercials (often in low viewership time slots and dead-of-night slots) has dramatically improved and is improving the stations' financial circumstances, and that is being reflected, in most markets, in improvements in their regular programming during other times.

In my own home city, for example, both of our independent broadcast stations have significantly improved their programming over the past two years.....less ancient black-and-white re-runs, more new(er) shows, more syndicated shows, newer movies, greater variety of programming, better local news coverage, more coverage of local events that network stations do not provide, etc. - all thanks to the enhanced income they've enjoyed from airing infomercials.

Step up now and yank this irreplaceable revenue away from these stations and the by-product will be an immediate regression in programming quality and in service to local communities.

5 - The variety, quality, integrity and creativity of infomercials as programming has been steadily improving and continues to improve. An argument can be made that a constantly changing variety of infomercials is equal or greater in entertainment value versus the independent broadcast stations' decades' old re-runs of Andy Griffith, Gomer Pyle, I Love Lucy and Starsky-And-Hutch, badly and cheaply made-for-drive-ins movies typically heavy with violence. Which IS better? - an old gangster movie where people are machine-gunned in the streets, cars blown up and "molls" beaten by their gangster boyfriends OR an infomercial about a juice machine or fitness device that promotes good health habits? The answer probably tells us why the viewing public is responsive to watching (and purchasing from) infomercials.

6 - As advertising goes, the infomercial is more tightly regulated, monitored and policed than any other form of advertising. Infomercials are held to a higher standard than conventional spot advertising. I can give you hundreds of examples to support this assertion. Yes, there are and probably always will be "bad" infomercials, just as there always will be "bad" regular programming. But the trend in the infomercial industry is toward more quality and variety, more information and entertainment value, and involvement of major corporations, non-profit organizations, even politicians. Given the opportunity to evolve unfettered, the "partnership" between the infomercial industry and broadcast stations is virtually certain to yield programming that meets viewers' needs and desires in innovative, interesting ways. The infomercial has established itself as legitimate programming.

In summary, the broadcast stations and their viewers are benefiting in a number of ways from unrestricted airing of infomercials. The viewers have more than one method of very direct

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control over their communities' stations' airing of infomercials. At this point, the public is welcoming this type of programming. If they feel differently at any time, they CAN create change, directly, with relative ease. Where is the NEED for government intervention?

Also, to impose restrictions on broadcast without imposing the same restrictions on cable is unfair. To impose restrictions on advertising that can only adversely impact on infomercials but not on spot advertisers is also unfair.

It seems to me that this is an aspect of life where the marketplace, the public, and the free enterprise system can be left alone, to function freely, so that government may turn its attentions to any number of much more urgent, life-and-death problems where intervention is inarguably needed.

Sincerely,

  
Dan S. Kennedy